

### **REMARKS**

Claims 2-7, 12-20, 23-27, 29 and 30 are pending in the present application. Claims 1, 8-11, 21, 22, and 28 have been Cancelled. Claims 2-5, 12-15, 17-20, 23, 24, 27, and 29 have been amended. Claims 2, 12, and 17 are independent claims. The Examiner is respectfully requested to reconsider the outstanding rejections in view of the above amendments and the following remarks.

### ***Drawings***

It is gratefully acknowledged that the Examiner has accepted the drawing corrections filed February 22, 2006.

### ***Rejection Under 35 U.S.C. § 102***

#### **Kung Rejection**

Claims 1-7, 11-16, 18-20, 23, 24, 27, and 29 stand rejected under 35 USC § 102(b) as being anticipated by U.S. Patent No. 5,850,470 to Kung et al. (hereafter "Kung").

Without conceding the validity of this rejection, claims 1 and 11 have been Cancelled above without prejudice or disclaimer to the subject matter contained therein. Thus, this rejection has been rendered moot insofar as it pertains to claims 1 and 11.

As amended, claims 2 and 12 are now independent. These claims recite extracting data of the aimed object based on depth information. In the rejection, the Examiner relies on Kung's teaching of coordinates information for the claimed depth information, citing col. 2, line 24 – col. 3, line 6 (see Office Action at page 5). However, Applicants respectfully submit that the coordinates of two-dimensional images, as taught in the cited sections of Kung, cannot be properly interpreted as depth information. Thus, the Examiner is applying an impermissibly broad interpretation to the claimed depth information in making this rejection.

However, in an effort to expedite prosecution, claims 2 and 12 have been further amended to recite extracting based on “depth information indicating the distance from the photographer’s camera to at least one part of the subject” (emphasis added), in an effort to more clearly distinguish the claimed depth information over Kung’s coordinates information. At most, Kung’s coordinates information merely indicates the relative location between different facial features, e.g., between eyes, eyebrows, and nose. See, Kung col. 2, line 63 – col. 3, line 3. As such, Kung’s coordinates information does not indicate the distance from the photographer’s camera to any part of the subject, as claimed.

Applicants respectfully submit that Kung’s teachings are deficient at least for the reasons set forth above. Accordingly, claims 2 and 12 are in condition for allowance. Further Applicants submit that claims 3-7, 13-16, 18-20, 23, 24, 27, and 29 are allowable at least by virtue of their dependency on claims 2 and 12. Therefore, reconsideration and withdrawal of this rejection is respectfully requested.

### **Nozaki Rejection**

Claims 8 and 28 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Published Patent Application No. 2003/0193610 to Nozaki et al. (hereafter Nozaki). Without conceding the validity of this rejection, claims 8 and 28 have been Cancelled above without prejudice or disclaimer of the subject matter contained therein. Accordingly, this rejection has been rendered moot.

### ***Rejection Under 35 U.S.C. § 103***

As to the rejections under 35 U.S.C. § 103(a) of claims 9, 10, 21, and 22, Applicants point out that these claims have been Cancelled above without prejudice or disclaimer of the subject matter therein. Thus, the rejection of these claims under § 103 has been rendered moot.

Claims 17, 25, 26, and 30 stand rejected under § 103 as being unpatentable over Kung in view of Nozaki. Without conceding the validity of this rejection, Applicants have amended claim

17 to recite similar features as those discussed above with respect to independent claims 2 and 12. Thus, Applicants respectfully submit that Kung is deficient with respect to claim 17 for reasons similar to those set forth above with respect to claims 2 and 12. Applicants further submit that Nozaki fails to remedy the deficiencies of Kung. Particularly, in this rejection, the Examiner relies on Nozaki merely to teach implementing an image processing apparatus with a software program stored in a recording medium (see Office Action at page 12). Thus, Applicants respectfully submit that claim 17 is allowable, and claims 25, 26, and 30 are allowable at least by virtue of their dependency on claim 17. Accordingly, the Examiner is respectfully requested to reconsider and withdraw this rejection.

### *Conclusion*


Entry of this amendment after final is respectfully requested. In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider the outstanding rejections and issue a Notice of Allowance in the present application.

However, Should the Examiner believe that any outstanding matters remain in the present application, the Examiner is respectfully requested to contact Jason W. Rhodes (Reg. No. 47,305) at the telephone number of the undersigned to discuss the present application in an effort to expedite prosecution.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Dated: October 6, 2006

Respectfully submitted,

By  #39,491  
for Michael K. Mutter  
Registration No.: 29,680  
BIRCH, STEWART, KOLASCH & BIRCH, LLP  
8110 Gatehouse Road  
Suite 100 East  
P.O. Box 747  
Falls Church, Virginia 22040-0747  
(703) 205-8000  
Attorney for Applicant